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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91250143
Party	Plaintiff Theragun, LLC
Correspondence Address	ROD S BERMAN JEFFER MANGELS BUTLER & MITCHELL LLP 1900 AVENUE OF THE STARS 7TH FLOOR LOS ANGELES, CA 90067 UNITED STATES Primary Email: trademarkdocket@jmbm.com 310-203-8080
Submission	Testimony For Plaintiff
Filer's Name	Jessica Bromall Sparkman
Filer's email	rberman@jmbm.com, jzb@jmbm.com, kp2@jmbm.com
Signature	/s/ Jessica Bromall Sparkman
Date	11/02/2020
Attachments	Wersland Declaration.pdf(340593 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THERAGUN, LLC,

Opposer,

v.

THERAGEN, INC.,

Applicant.

Opposition No. 91/250,143

Appl. Serial Nos.: 88/369,252; 88/369,266

Mark: THERAGEN

Published for Opposition: July 3, 2019

Atty. Ref. No.: 76840-9019

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

REBUTTAL DECLARATION OF DR. JASON WERSLAND

1. My name is Dr. Jason Wersland. I am a chiropractor and the founder and Chief Wellness Officer at opposer Theragun, Inc. ("Opposer"). I have personal knowledge of the facts set forth herein, or knowledge based on the documents in Opposer's files and, if called as a witness, could and would competently testify thereto.

2. Opposer was converted from the limited liability company Theragun, LLC to the corporation Theragun, Inc. on October 2, 2019. The conversion was recorded with the United States Patent and Trademark Office and a copy of that recorded document is attached hereto as Exhibit A.

3. I have more than ten years of experience as a chiropractor. As part of my training, I learned about numerous methods and products used for pain management and muscle strengthening and recovery. Those methods and products included both massage and electrostimulatory devices.

4. Among other things, Opposer uses the THERAGUN mark in connection with massage apparatus, including electric vibrating massagers. I developed my first massage product to help myself with pain management following a motorcycle crash. Since then, I have been involved every aspect of product development and design for the THERAGUN massage products. I have interacted with thousands of individuals, including doctors, trainers, physical therapists, athletes, patients, and various others who have used the products.

5. Opposer's massage products are used to stimulate muscles and increase strength and improve physical performance. Opposer's massage products are used to soothe and loosen muscles that are painful, tight, or sore from exertion or injury, as well as to promote healing after exertion or injury. Opposer's massage products are also useful in targeting specific areas or muscle groups.

6. Opposer's massage products are used by individuals in their own homes, as part of an individual fitness, health, or wellness plan and also as part of a recovery or therapy plan following injury. Opposer's massage products are also used by professional physical therapists and trainers as part of fitness, health, wellness, recovery, and therapy plans administered to their patients or clients.

7. Opposer's massage products are used by average consumers, weekend warriors, and athletes at all levels. Numerous professional athletes incorporate Applicant's massage products into their training and recovery routines. In fact, Theragun products are now used by more than 250 professional sports teams worldwide.

8. I understand that applicant Theragen, LLC ("Applicant") has applied to register THERAGEN for *medical devices, namely, electrostimulatory devices for tissue, bone and/or*

joint treatment, medical treatment apparel, and a kit comprising an electrostimulatory device and medical treatment apparel.

9. Electrostimulatory devices are commonly used for purposes similar to those for which Opposer's massage products are used – namely, to stimulate muscles and increase strength and improve physical performance, to soothe and loosen muscles that are painful, tight, or sore from physical exertion or injury, to promote healing after exertion or injury, and to target a specific area or muscle group.

10. Like Opposer's products, electrostimulatory devices can be used by individuals in their own homes as part of an individual fitness, health, or wellness plan and also as part of a recovery or therapy plan following injury. Electrostimulatory devices are also used by professional physical therapists and trainers as part of fitness, health, wellness, recovery, and therapy plans administered to their patients or clients. Electrostimulatory devices are also regularly used by professional athletes and professional sports teams as part of their training and recovery programs.

11. While some electrostimulatory devices require a prescription, many are available over the counter without prescription.

12. Some users may choose to use both Opposer's massage products and an electrostimulatory stimulatory devices as part of their treatment fitness, health, wellness, recovery, or therapy plans. Some may choose to instead to use only one or the other.

13. Many companies offer both massage apparatus, including electric vibrating massagers, and electrostimulatory devices. Some examples are: Compex, iReliev, Beuer, and PlayMakar. Additionally, massage apparatus, including electric vibrating massagers, and electrostimulatory devices are sold through the same channels; many retail stores and websites

offer both products, including, for example: iReliev.com, RehabMart.com, ScrippHessco.com, and tenspros.com.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this Declaration is executed on October 27, 2020 at LOS ANGELES, California.

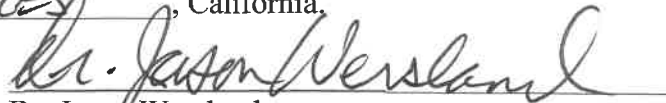

Dr. Jason Wersland

EXHIBIT A

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM555042

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ENTITY CONVERSION		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Theragun, LLC		09/30/2019	Limited Liability Company: DELAWARE
RECEIVING PARTY DATA			
Name:	Theragun, Inc.		
Street Address:	9420 Wilshire Blvd., Fourth Floor		
City:	Beverly Hills		
State/Country:	CALIFORNIA		
Postal Code:	90212		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 45			
Property Type	Number	Word Mark	
Serial Number:	88694242	ACTIVE TORQUE CONTROL	
Serial Number:	88617837	ARTHRITIS CBD	
Serial Number:	88617806	CBD FOR SPORT	
Serial Number:	88422940	CHANGE THE WAY YOU LIV	
Serial Number:	88422931	CHANGE THE WAY YOU MOVE	
Serial Number:	88422951	DESIGNED FOR PROFESSIONALS, MADE FOR EVE	
Serial Number:	87893365	EVERY. BODY.	
Serial Number:	88615087	FARM TO BODY	
Serial Number:	88623273	FEEL THE DIFFERENCE	
Serial Number:	88623296	FEEL WHAT'S POSSIBLE	
Serial Number:	88617827	FITNESS CBD	
Registration Number:	5618672	G2PRO	
Serial Number:	88623256	G4	
Serial Number:	88623263	G4PRO	
Serial Number:	88623284	INTELLIGENT PERCUSSIVE THERAPY	
Serial Number:	88623279	MAKE WAVES	
Serial Number:	88471826	MASSAGE REINVENTED	
Serial Number:	88435499		
Serial Number:	88623304	PERCUSSIVE FORCE	

TRADEMARK

Property Type	Number	Word Mark
Serial Number:	88633980	QUIETFORCE TECHNOLOGY
Serial Number:	88617822	RECOVERY CBD
Registration Number:	5205065	RISE TO RECOVER
Serial Number:	88715431	SMART FOAM ROLLER
Serial Number:	88615898	SMART PERCUSSION THERAPY
Serial Number:	88607032	SMART PERCUSSIVE THERAPY
Serial Number:	88662119	SUPERSOFT
Serial Number:	88057776	T
Registration Number:	5205064	T G
Serial Number:	88422917	THE THERAGUN NETWORK
Serial Number:	88696755	THERABODY
Registration Number:	5213141	THERAGUN
Serial Number:	88422970	THERAGUN
Serial Number:	88682612	THERAGUN ELITE
Serial Number:	88402300	THERAGUN G3
Serial Number:	88402270	THERAGUN G3PRO
Serial Number:	88422901	THERAGUN LIV
Serial Number:	88682583	THERAGUN MINI
Serial Number:	88721223	THERAGUN PRIME
Serial Number:	88682598	THERAGUN PRO
Serial Number:	88536440	THERAGUN RESET
Registration Number:	4760327	THERAGUNZ
Serial Number:	87893344	THERALYFE
Serial Number:	88703837	THERAONE
Serial Number:	88422994	TREAT YOURSELF
Serial Number:	88715408	WAVE ROLLER

CORRESPONDENCE DATA

Fax Number: 3102030567

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 3102038080

Email: trademarkdocket@jmbm.com

Correspondent Name: Rod S. Berman

Address Line 1: Jeffer Mangels Butler & Mitchell LLP

Address Line 2: 1900 Avenue of the Stars, 7th Floor

Address Line 4: Los Angeles, CALIFORNIA 90067

ATTORNEY DOCKET NUMBER: 76840-0001

NAME OF SUBMITTER: Rod S. Berman

SIGNATURE:	/rod s. berman/
DATE SIGNED:	12/27/2019
Total Attachments: 2 source=Certified copy of Certificate of Conversion from LLC to Corporation - Theragun, Inc#page1.tif source=Certified copy of Certificate of Conversion from LLC to Corporation - Theragun, Inc#page2.tif	

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "THERAGUN, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE FOURTEENTH DAY OF MARCH, A.D. 2016, AT 6:32 O`CLOCK P.M.

CERTIFICATE OF CONVERSION, CHANGING ITS NAME FROM "THERAGUN, LLC" TO "THERAGUN, INC.", FILED THE SECOND DAY OF OCTOBER, A.D. 2019, AT 12:58 O`CLOCK P.M.

CERTIFICATE OF INCORPORATION, FILED THE SECOND DAY OF OCTOBER, A.D. 2019, AT 12:58 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "THERAGUN, INC.".



A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

5988786 8100H
SR# 20198725442

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 204250202
Date: 12-18-19

TRADEMARK
REEL: 006826 FRAME: 0652

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:58 PM 10/02/2019
FILED 12:58 PM 10/02/2019
SR 20197340360 - File Number 5988786

**STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A LIMITED LIABILITY COMPANY TO A
CORPORATION PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW**

1. The jurisdiction where the Limited Liability Company first formed is Delaware.
2. The jurisdiction of the Limited Liability Company immediately prior to filing this Certificate is Delaware.
3. The date the Limited Liability Company first formed is March 14, 2016.
4. The name of the Limited Liability Company immediately prior to filing this Certificate is Theragun, LLC.
5. The name of the Corporation as set forth in the Certificate of Incorporation is Theragun, Inc.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Limited Liability Company have executed this Certificate on September 30, 2019.

By: Benjamin Nazarian
Name: Benjamin Nazarian
Title: Chief Executive Officer

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, a true and correct copy of the foregoing **REBUTTAL DECLARATION OF DR. JASON WERSLAND** is being served, via email, addressed to counsel for Defendant of record as follows:

Lynn E. Rzonca
Ballard Spahr LLP
1735 Market Street 51st Floor
Philadelphia, PA 19103-7599
Email: tmdocketing@ballardspahr.com, rzoncal@ballardspahr.com

/s/ Kerene Palmer
Kerene Palmer